

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

DOCKET FILE COPY ORIGINAL
RECEIVED

AUG 18 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Access Charge Reform)	CC Docket No. 96-262

OPPOSITION OF
THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY
TO PETITIONS FOR RECONSIDERATION BY AT&T AND AD HOC

The Southern New England Telephone Company ("SNET") respectfully submits its Opposition to the Petitions for Reconsideration filed by AT&T Corporation ("AT&T") and Ad Hoc Telecommunications Users Committee ("Ad Hoc")¹ in the above referenced proceeding.² The arguments raised by petitioners do not warrant reconsideration by the Commission.

I. THE COMMISSION WAS CORRECT IN RETAINING THE LOWER FORMULA
ADJUSTMENT MECHANISM.

The Commission recognizes that its price cap mechanism, with a challenging productivity offset (or "X factor"), must continue to permit Local Exchange Carriers ("LECs") with rates of return below 10.25 percent to raise their Price Cap Indices ("PCIs") to a level that would enable them to earn 10.25 percent, against the possibility that such an

¹ Petition of AT&T Corp. for Partial Reconsideration of the Commission's X-Factor Order, ("AT&T Petition"), and Petition for Reconsideration on Behalf of Ad Hoc Telecommunications Users Committee ("Ad Hoc Petition") filed July 11, 1997.

² Price Cap Performance Review for Local Exchange Carriers, Access Charge Reform, Fourth Report and Order, CC Docket No. 94-1, and Second Report and Order, CC Docket No. 96-262, 62 FCC Register 31939 (June 11, 1997) ("X-Factor Order").

X-factor would be “too challenging.”³ SNET understood the Commission’s retention of LFAM as building upon subsequent Price Cap Orders notwithstanding AT&T’s aside that the Commission “merely pronounces a barebones conclusion that the low-end adjustment mechanism is being retained.”⁴

Despite the continued attempt by AT&T to claim that all LECs “continue to be enriched by their current windfall earning levels,”⁵ SNET has never reached the “sharing” level since electing price cap regulation in 1991, in marked contrast to other price cap LECs. In its 1992 Annual Access Tariff filing, Transmittal No. 538, April 2, 1992, SNET demonstrated its earnings’ basis for the lower formula adjustment mechanism (“LFAM”). The Commission’s LFAM adjustment recognizes the possibility of earnings variations among LECs. Such a mechanism is entirely appropriate to meet short-term circumstances where the X-factor produces unreasonably low rates.⁶ In retaining LFAM, the Commission provides some “protection” for certain LECs.

SNET’s price cap election was based on the Commission’s recognition that 1) it would be extremely difficult to apply a single, industry-wide productivity offset which would be accurate and fair to each LEC at all times; and 2) individual LECs may experience significant variations from the industry norm as a result of regional economic conditions.⁷ The Commission designed the LFAM adjustment mechanism for case-by-case, short-term

³ X-Factor Order, at para. 127; and Order, CC Docket Nos. 26-262, 94-1, 91-213, 95-272 (Denying Petitions for Stay of its Access Reform and X-Factor Orders), released June 18, 1997, at para. 25.

⁴ AT&T Petition at p. 12.

⁵ AT&T Petition at p. 16 and fn. 22.

⁶ X-Factor Order at para. 11, 160.

⁷ Second Report and Order, Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6807 (1990), para. 120 (“LEC Price Cap Order”)

shortfalls and unintended adverse consequences of the Price Cap plan. AT&T's red herring that LECs have "abused" the low-end adjustment mechanism by "manipulating year-to-year rate of return levels"⁸ strains logic. All LECs experience year-to-year earnings variability due to differences in regional economics, and not AT&T's innuendo that such a result is due to manipulation.

Further, by claiming that LECs failed to mount a "serious defense" of the low-end adjustment mechanism, AT&T would have the Commission believe that SNET does not oppose the current "one-size-fits-all" 6.5% X-Factor.⁹ SNET's particular circumstance as a single-state LEC is limited in its capacity to reduce costs and increase efficiencies under all past price cap plans. SNET's performance under the X-factor price cap regime, has been and will continue to be, severely tested. Moreover, SNET is well aware of the Commission's "power to grant relief if a LEC is in dire economic circumstance(s)."¹⁰ The remedy of the LFAM mechanism is appropriate only for temporary relief, for a given year, and not for repeated earnings short-falls.¹¹ A LEC must demonstrate its earnings based on historical experience. Therefore, SNET intends to vigorously pursue all appropriate avenues to prevent its rate of return from falling below acceptable levels. To that end, the Petition for Waiver and/or Amendment of Part 61 of the Commission's Rules Establishing an "X-Factor" of 6.5%, filed August 13, 1997 by SNET, demonstrates that good cause exists to grant SNET a waiver from application, both retrospectively and prospectively, of the 6.5% X-Factor.

⁸ AT&T Petition at p. 13.

⁹ See Petition of The Southern New England Telephone Company for Waiver and/or Amendment of Part 61 of the Commission's Rules Establishing an "X-Factor" of 6.5%, filed August 13, 1997.

¹⁰ AT&T Petition at fn. 21.

¹¹ X-Factor Order at para. 157.

II. NO PARTY HAS PRESENTED AN ECONOMICALLY MEANINGFUL METHOD OF DEVELOPING AN INTERSTATE ONLY PRODUCTIVITY FACTOR.

SNET agrees with the position taken by USTA in opposing the attempts by AT&T and Ad Hoc to rely upon interstate-only data in measuring LEC productivity.¹² The Commission found that there is no basis for a difference between interstate and total company productivity.¹³ In addition, Ad Hoc's arguments to reverse the Commission's rejection of its productivity estimates does not negate that fact that Ad Hoc failed to make its model results and calculations publicly available.¹⁴ Therefore, the Commission was correct in not relying upon Ad Hoc's X-factor estimates, nor to give any weight to the interstate only productivity proposals of AT&T.¹⁵

III. THE REVISED X-FACTOR SHOULD NOT BE APPLIED TO THE 1995 TARIFF YEAR.

The Commission concludes that the revised X-Factor should not apply to the 1995 tariff year to strike a proper balance between stockholder and ratepayer interests.¹⁶ AT&T suggests that such a balance is unnecessary and that, in order to benefit consumer interests, the Commission should revise its Order and adopt the revised X-Factor effective with the

¹² X-Factor Order at para. 110. "None of these parties...provides a factual or theoretical explanation as to why its assumptions might be correct." See Also Price Cap Performance Review for Local Exchange Carriers, Price Cap Fourth Further Notice of Proposed Rulemaking, CC Docket No. 94-1, 10 FCC Rcd 13659 (1995), USTA Comments, January 16, 1996 and Reply Comments, March 1, 1996.

¹³ X-Factor Order at paras. 110 and 111.

¹⁴ X-Factor Order at para. 38.

¹⁵ X-Factor Order at para. 137.

¹⁶ X-Factor Order at para. 179. "At the same time we wish to limit harm to LEC productivity incentives that could result from the perception that our regulatory policies unnecessarily lack constancy."

LECs' 1995 annual tariff filing.¹⁷ The Commission should not adopt AT&T's proposal because to do so would harm LEC productivity incentives in a properly crafted price cap plan.

IV. CONCLUSION

Neither the record nor petitioners' arguments warrant the Commission granting the relief sought. Therefore, AT&T's and Ad Hoc's Petitions for Reconsideration should be rejected.

Respectfully submitted,

THE SOUTHERN NEW ENGLAND TELEPHONE COMPANY

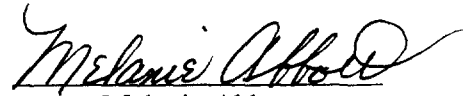
By Wendy Bluemling
Wendy Bluemling
Director - Regulatory Affairs
227 Church Street
New Haven, CT 06510
(203) 771-8514

August 18, 1997

¹⁷ AT&T Petition at p. 19.

CERTIFICATE OF SERVICE

I, Melanie Abbott, hereby certify that SNET's Opposition to the foregoing have been filed this 18th day of August 1997, by U.S. Mail, First Class, postage prepaid, to the parties on the service list below.


Melanie Abbott

Peter Jacoby, Esq.
AT&T Corp.
295 North Maple Avenue
Basking Ridge, NJ 07920

James Blaszak, Esq.
Ad Hoc Telecommunications Users
Committee
Levine, Blaszak, Block and Boothby
1300 Connecticut Avenue, NW
Suite 500
Washington, DC 20036